

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on February 3, 2003 at 8 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: Rep. Holly Raser (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Lisa Swanson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 448, 1/29/2003; HB 17,
1/29/2003; HB 447, 1/29/2003
Executive Action: HB 447; HB 284; HB 350; HB 418; HB
331

HEARING ON HB 448**Sponsor:** REP. CHRISTOPHER HARRIS, HD 30, Bozeman**Opening Statement by Sponsor:**

REP. HARRIS opened on HB 448. He stated this bill should remain on the books but be revised. He explained that leaving the law as it is could have unintended consequences in this age of computers and technology. He explained that the criminal defamation would still be on the books but penalties should be lowered. He explained this bill would make it harder to prosecute but, in this case, would be good public policy. He believed that the correct way to handle defamation would be in the civil arena. However, he stated that we do need criminal defamation in rare circumstances. He stated the privacy and communications section of the bill should be amended. He emphasized that if the law is left unchanged, then the forwarding of an e-mail could become an offense. He stated it is important, in this electronic era, to not criminalize behavior which a person has no control over. He stated that rather than create expensive litigation, resulting in revisions of the law, he suggested the Committee deal with revising the law to meet public policy.

{Tape: 1; Side: A; Approx. Time Counter: 1 - 44}**Proponents' Testimony:** None**Opponents' Testimony:** None**Informational Testimony:** None**Questions from Committee Members and Responses:** None**Closing by Sponsor:**

REP. HARRIS closed on HB 448.

HEARING ON HB 17**Sponsor:** REP. BRAD NEWMAN, HD 38, Butte**Opening Statement by Sponsor:**

REP. NEWMAN opened on HB 17 stating that when this bill hit the floor, there was some serious concern about the fiscal note. He stated that after some parliamentary negotiations, at his request, the bill was referred back to this Committee. He

explained that the Committee should decide whether to leave the Raser Amendment, or to send the bill back to the floor in its original form. He felt that the Raser amendment is not necessary; that if the injury reached a high enough level, the offender could be prosecuted under existing criminal laws.

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Proponents' Testimony:

Verner Bertelson supported HB 17. He stated he testified as a proponent on this bill the last time it was heard and that he still believes it is a good bill.

John Connor, Department of Justice, supported HB 17. He stated that he too supported this bill the last time it was presented. He stated if the amendments will hang the bill up, he agreed that the bill should be put back in its original form.

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Pat Harper, Associate State Director, AARP, supported HB 17. She stated that she represents 136,000 members across Montana. She stated they sympathize with REP. RASER's concerns, but they are primarily interested in protecting the elderly. She stated that the bill is not perfect, but that it at least would address exploitation of the elderly. She stated her concern that keeping the amendments would cause the bill to fail.

{Tape: 1; Side: A; Approx. Time Counter: 154 - 166}

Jim Smith, Montana Sheriff's and Peace Officer's Association, supported HB 17 as it was originally introduced without the amendments.

Bob Pyfer, Montana Credit Union Network, supported HB 17. He stated the Credit Unions have been involved with issues regarding the exploitation of the elderly.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. RICE asked Mr. Pyfer about joint tenancies and precautions to prevent exploitation. **Mr. Pyfer** responded that one precaution is to set up a joint tenancy for convenience account. He explained that this account allows a child or friend to be on the

checking account to buy groceries but would prevent someone from inheriting money not intended for them. He stated that this account does not give a right of survivorship if the person dies. He stated there are some other protections in the law and that the Credit Unions are trying to educate the public. He stated they are in Section 72 of the Montana Code.

Closing by Sponsor:

REP. NEWMAN closed on HB 17 stating that it takes a lot of proof to look at a case involving the mismanagement of a joint tenancy agreement. He explained that most exploitation cases occur outside of the account. He stated that joint accounts usually have agreements which allow both people access to the funds.

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HEARING ON HB 447

Sponsor: **REP. JOEY JAYNE, HD 73, Arlee**

Opening Statement by Sponsor:

REP. JAYNE opened on HB 447 stating that this bill would decrease the maximum incarceration term for a persistent felony offender. She stated the penalty would be decreased from a 100-year maximum down to a 20-year maximum. She stated that the intent of this bill is not to repeal the law, but to increase consistency throughout the courts in Montana. She emphasized that judges are sentencing all over the board and this bill would help bring consistency to sentencing. She stated the Court has ruled that it is not unconstitutional to have a 20- to 100-year spread for a persistent felony offender, but she believes the legislature should amend the statute to bring consistency. She explained that the law, as written, is cluttering the code as it is not utilized by most prosecutors.

{Tape: 1; Side: A; Approx. Time Counter: 294 - 482}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NEWMAN asked whether **REP. JAYNE** spoke with the Sentencing Review Division to get their input. **REP. JAYNE** responded she had not but that she did review the sentence review sections in the Code.

Closing by Sponsor:

REP. JAYNE closed on HB 447. She stated in her experience, over the past 10 years, that there has not been consistency in sentencing. She felt that the prosecution and the courts utilize the persistent felony offender statute rarely, yet inconsistently. She urged a do pass.

EXECUTIVE ACTION ON HB 447

Motion: **REP. PARKER** moved that HB 447 BE TABLED.

Discussion:

REP. NEWMAN supported the motion. He explained that the persistent felony offender is used to enhance a sentence. He stated it is used only when a person has two prior felony convictions, within a five year period when they get a third conviction. He stated that the **REP. JAYNE** came up with an arbitrary number, twenty years, without supporting data. He explained that the Sentence Review Division looks at the sentences, determines whether they are fair consistent with other sentences with similar factual backgrounds. He stated that in his experience, the process works.

Vote: Motion HB 447 BE TABLED carried 15-0 by voice vote. (**REPS. RASER, NOENNIG, and CLARK** out of the room.)

EXECUTIVE ACTION ON HB 284

Motion: **REP. NOENNIG** moved that HB 284 DO PASS.

Discussion:

The Committee discussed the right to refuse the blood alcohol content (BAC) test. **REP. RICE** asked whether a person has a right to refuse the BAC. **REP. NOENNIG** felt that although you have a right to refuse, you do so with a paralyzing effect. Some members felt that the BAC should be triggered by fact rather than probable cause. **REP. FACEY** commented that at present, law enforcement would need a warrant to take a BAC of an accident

victim. **REP. PARKER** stated that the Court has held that if a defendant had blood on their hands, a warrant would still be required. He emphasized that you cannot legislate around the Constitutional warrant requirement. **REP. LANGE** stated that the bill would change "bodily" to "serious" bodily injury.

Vote: Motion that HB 284 DO PASS carried 12-4 by roll call vote with REPS. LASZLOFFY, RICE, GALLUS, and GUTSCHE voting no.

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{Tape: 2; Side: A; Approx. Time Counter: 1 - 96}

EXECUTIVE ACTION ON HB 350

Motion: REP. GALLUS moved that HB 350 DO PASS.

Discussion:

The Committee discussed HB 350 which expands the authority of the Highway Patrol, giving them the power to arrest a person in possession of drugs, paraphernalia, or precursors. **REP. NOENNIG** added the bill would expand the definition of narcotics to cover all dangerous drugs. The Committee discussed possession and transportation. **CHAIRMAN SHOCKLEY** stated that a person can possess without transporting. **REP. HARRIS** stated a person has to have a criminal intent to be charged with possessing precursors.

Motion/Vote: REP. PARKER moved that HB 350 BE AMENDED. Motion carried unanimously by voice vote.

Motion: REP. FACEY moved that HB 350 DO PASS AS AMENDED.

Discussion:

The Committee discussed the differences between counties in how long it takes officers to respond. The Committee also discussed the bill's intent of allowing the Highway Patrol, if they see drugs or paraphernalia, to make an arrest until backup arrives.

Vote: Motion HB 350 DO PASS AS AMENDED carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 97 - 437}

EXECUTIVE ACTION ON HB 418

Motion: REP. GALLUS moved that HB 418 DO PASS.

Motion/Vote: REP. GALLUS moved that HB 418 BE TABLED. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 438 - 471}

EXECUTIVE ACTION ON HB 331

Motion: REP. GALLUS moved that HB 331 DO PASS.

Motion: REP. GALLUS moved that HB 331 BE AMENDED.

Discussion:

REP. GALLUS explained that the intent of this bill is to collect restitution from people who fail to pay for rental equipment. He suggested segregating the amendments. John MacMaster explained that the amendment would take it from a felony down to a misdemeanor, and that it would only apply to rental bills exceeding \$250. This would prevent the law from applying to the guy who is late with a video or a drill. REP. GALLUS stated that the amendment would also prevent a "debtor's prison" mentality. REP. PARKER opposed the bill stating there are already statutes to cover this. REP. RICE stated her family is in this business and that they have a full-time mechanic to work on the rental equipment.

Vote: Motion that HB 331 BE AMENDED carried unanimously by voice vote.

Motion/Vote: REP. GALLUS moved that HB 331 DO PASS AS AMENDED. Motion carried 13-5 by roll call vote with REPS. GUTSCHE, PARKER, MALCOLM, NOENNIG, and SHOCKLEY voting no.

{Tape: 2; Side: B; Approx. Time Counter: 1 - 414}

ADJOURNMENT

Adjournment: 12 P.M.

REP. JIM SHOCKLEY, Chairman

LISA SWANSON, Secretary

JS/LS

EXHIBIT (juh23aad)